

ARTICLE 9

NONCONFORMING USES, STRUCTURES, AND LOTS

Section 9.01 - Nonconformity by Initial Enactment or Amendment

The provisions of this section apply to actions in connection with nonconforming uses, structures and lots as created by the initial enactment of this Bylaw or by any subsequent amendment. It is the purpose of this Bylaw to discourage the perpetuity of nonconforming uses whenever possible. The lawful use of any building or land existing at the time of the enactment of this Bylaw may be continued, except as otherwise provided.

Section 9.02 - Extension and Alteration

- a. Any nonconforming use, except for agriculture, horticulture, or floriculture, of any open space on a lot outside a structure, or of a lot not occupied by a structure, shall not be extended.
- b. Any nonconforming principal use of a structure shall not be extended.
- c. Any nonconforming accessory use of a portion of a structure or any conforming accessory use of a portion of a nonconforming structure may be extended up to a maximum of forty (40) percent of the floor area of the existing structure.

ART. 103, ATM 4/87; ART. 4, ATM 4/89; ART. 8, ATM 5/91; ART. 30, ATM 4/97

- d. Any nonconforming structure may be altered and the conforming use extended throughout the altered portion, provided that any resultant alteration shall not cause the structure to further violate the dimensional and density regulations of the district in which it is located.

A single or two-family residential structure may be altered and the conforming use extended throughout the altered portion provided that the resultant alteration does not increase the nonconforming nature of the structure. An alteration that is completely within the existing foundation walls shall be deemed not to increase the nonconforming nature of the structure.

The alteration of any single or two-family structure which is not otherwise permitted as a matter of right by the above paragraphs in this section 9.02 d., may be allowed providing that no such alteration shall be permitted unless there is a finding by the special permit granting authority that the alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. In making such a finding, the special permit granting authority shall assess the dimensions and proposed setback of the alteration in relationship to abutting structures and uses.

- e. Any nonconforming structure or portion thereof which has come into conformity shall not again become nonconforming.

Section 9.03 - Residential Lot of Record

ART. 74, ATM 3/85

Any lot lawfully laid out by plan or deed duly recorded which complies (at the time of recording) with the minimum area, frontage, width, and depth requirements, if any, of the zoning bylaw then in effect, may be built upon for residential use provided it has a minimum area of five thousand (5,000) square feet, with a

minimum front footage of fifty (50) feet, and is otherwise in accordance with the provisions of the fourth paragraph of Section 6 of the Zoning Act.

Section 9.04 - Reduction or Increase

ART. 72, ATM 3/77; ART. 103, ATM 3/87

- a. Any lot or open space on a lot including yards and setbacks shall not be reduced or changed in area or shape so that the lot, open space, yard, or setback is made nonconforming or more nonconforming unless the Special Permit Granting Authority has permitted an alteration to the property pursuant to Section 9.02 d. This section, however, shall not apply in the case of a lot a portion of which is taken for a public purpose.
- b. No building area or floor area, where already nonconforming, shall be increased so as to be in greater non-conformity.
- c. Any off-street parking or loading spaces, if already equal to or less than the number required to serve their intended use, shall not be further reduced in number.

Section 9.05 - Change

ART. 105, ATM 3/87

- a. Any nonconforming use of structure may be changed to another nonconforming use by Special Permit provided the new use is not a substantially different use as determined by the ZBA.

ART. 105, ATM 3/87

- b. Any nonconforming use which has been once changed to a permitted use shall not again be changed to another nonconforming use.
- c. Any nonconforming lot which has come into conformity shall not again be changed to a nonconforming lot.

Section 9.06 - Restoration

ART. 86, ATM 3/78; ART. 12, ATM 5/91; ART. 6, ATM 4/93; ART.31, ATM 4/97

- a. Any nonconforming structure or any structure occupied by a nonconforming use, which is damaged by fire or other natural cause may be repaired or rebuilt according to the dimensions and floor area limitations of the original structure and used for its original use or a conforming use.
- b. If restoration under a. above is not started within one (1) year of the cause of the damage, the repaired structure shall not be used except for a conforming use.

Section 9.07 - Abandonment

ART. 72, ATM 3/77

Any nonconforming use of a conforming structure and lot which has been abandoned for a continuous period of two (2) years or more shall not be used again except for a conforming use. For agriculture, horticulture or floriculture, the abandonment period shall be five (5) years.

A nonconforming use shall be considered abandoned when the premises have been devoted to another use, or when the characteristic equipment and the furnishing of the nonconforming use have been removed from the premises and have not been replaced by similar equipment within two (2) years unless other facts show intention to resume the nonconforming use.

Section 9.08 - Moving

Any nonconforming structure shall not be removed to any other location on the lot or any other lot unless every portion of such structure, the use thereof, and the lot shall be conforming.

Section 9.09 - Unsafe Structure

ART. 32, ATM 4/97; ART. 9, ATM 5/91

Except as covered under Sections 9.06 and 9.07, any structure determined to be unsafe may be restored to a safe condition, provided such work on any nonconforming structure shall be completed within one (1) year of the determination that the structure is unsafe and it shall not place the structure in greater nonconformity. A structure may be exempted from this provision by a special permit granted by the ZBA, or in cases subject to Section 11.06, the ARB.

Section 9.10 - Special Permit Uses: Repair, Reconstruction, Extension, Addition.

ART. 102, ATM 3/83

Special permit uses are a special class of uses not existing as of right. Except as hereinafter provided, whenever a structure or lot is occupied by a use such as would require a special permit pursuant to Section 5.04, and Section 11.06 when applicable, if such activity were to commence as a new use thereon, then any reconstruction, alteration, addition or extension of such use or of an existing or destroyed structure shall be undertaken only pursuant to special permit(s) issued therefore, except when or for:

1. A damaged or unsafe structure occupied by a use under previously granted special permit(s) may be repaired or reconstructed for such use in accordance with the same terms and conditions, if any, attached to such permit(s).
2. A damaged or unsafe structure occupied by a use not under previously granted special permit(s) may be repaired or reconstructed for such use without such permit(s) provided that the cost of such repair or construction does not exceed fifty (50%) percent of the physical replacement value of the previously existing structure(s).
3. Interior renovations are done without any addition to the gross floor area of the existing structure(s).

ART. 3, ATM 4/89

4. Reconstruction, alteration, or additions to a structure occupied by a use under previously granted special permit(s) for such activity provided that the addition does not exceed the lesser of 500 square feet or twenty-five (25%) percent of the gross floor area in existing structure(s) and that no such activity violates any condition(s) attached to such permit(s).

None of the foregoing exceptions shall exempt any construction undertaken thereunder from compliance with all dimensional, density, parking, landscaping or other provisions of this bylaw.

